IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12795 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESH ISHWARLAL CHOKHAWALA - Petitioner(s)

Versus

SUNNY BUTIKA - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner No(s).: 1.

MR MM TIRMIZI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 04/08/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 19th July, 2000 passed by the Labour Court, Surat in Reference [L.C.S.] No. 931/97 whereby the Labour Court has denied the the back wages.

2. The short facts of the case are that the petitioner was appointed for doing Miscellaneous work with the respondent. It is the case of the petitioner that the respondent without following the procedure under the Industrial Disputes Act, 1947 terminated the service of the petitioner. Feeling aggrieved by the said order, the petitioner raised an industrial dispute which was ultimately referred to the Labour Court, Surat for adjudication. The Labour Court after appreciating the materials produced on record, directed the respondent to reinstate the petitioner in service without back wages. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials produced on record. From the award it appears that the Labour Court while ordering reinstatement has observed that since the respondent is willing to work with the petitioner, he may be reinstated in service. However, the Labour Court while denying has not given any cogent reasons. However in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be

dealt with in accordance with the facts and circumstances of each case.

3.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court, and find no reason to interfere.

4. In the result, the petition is dismissed. The impugned award passed by the Labour Court, Surat is confirmed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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